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DJW

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

LEIGH SEAGER,

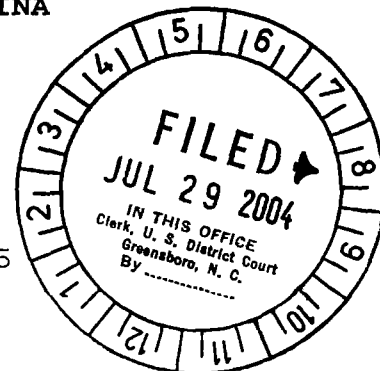
Plaintiff,

v.

JAMES M. WALTER PROFIT SHARING
PLAN, JAMES M. WALTER PENSION PLAN,
JAMES M. WALTER, JR., DOCTORS
WALTER & WHITEHOUSE PROFESSIONAL
ASSOCIATION, corporation (formerly
known as James M. Walter, Jr.,
D.D.S., M.S., P.A), a North
Carolina corporation,

Defendants.

1:04CV00035



RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

I. Facts

This case comes before the Court on defendant's motion to dismiss which is brought under Fed. R. Civ. P. 12(b)(6). The facts alleged in plaintiff's amended complaint¹ are as follows. In 1981, plaintiff and defendant James Walter were married. During their marriage, defendant worked as a licensed oral surgeon, mostly in his own practice. Plaintiff worked as an office manager in that practice until 1996 when they separated. For many of the years she worked for Walter's practice, plaintiff and Walter were members of the defendant James Walter Pension Plan and its successor, the

¹The amended complaint was filed after the motion to dismiss was filed, but before plaintiff submitted her response brief. The amended complaint does not add or delete any claims. However, to some extent, the amended complaint addresses issues raised in the motion to dismiss. Defendants have not opposed the filing of the amended complaint, filed a reply in support their motion to dismiss, or otherwise commented on the effect of the amended complaint on the issues raised in their motion to dismiss.

James Walter Profit Sharing Plan (the Plans). The Plans were sponsored by defendant Walter and Whitehouse, P.A. or its predecessor James M. Walter, Jr. D.D.S., M.S., P.A. Walter himself is alleged to have been the trustee, administrator, and manager of the Plans.

In 1996, plaintiff began an action for equitable distribution of marital property in the North Carolina state courts. In April of 2000, the state trial court issued a judgment of equitable distribution. That judgment, in pertinent part, stated that the trial court would enter qualified domestic relations orders (QDRO's) giving plaintiff and Walter each a fifty percent interest in the other's accounts in the Plans. However, before the QDRO's were issued, both plaintiff and Walter appealed the equitable distribution judgment. Therefore, the trial court's judgment was stayed.

While the appeals were pending, plaintiff became concerned that Walter might remarry and that, if he were to then die, his new wife would have federally established survivor rights which preempted any state law rights plaintiff had in Walter's accounts in the Plans. For this reason, she filed a motion with the North Carolina Court of Appeals to allow for the lifting of the stay of the trial court's judgment for the limited purpose of allowing it to enter the previously mentioned QDRO's. Walter opposed this motion, but it was subsequently granted. Thereafter, on November

17, 2000, the trial court issued two QDRO's² giving plaintiff a fifty percent interest in Walter's accounts in the Plans and two QDRO's giving Walter a fifty percent interest in plaintiff's accounts in the Plans. The QDRO's, which are attached to the original complaint as Exhibits B and C, state that plaintiff's and Walter's account balances shall be determined as of August 21, 1996, that one-half of the balances shall then be transferred to a separate account in the other's name, and that the separate accounts would then be credited with future gains or losses as the terms of the Plans dictated. The QDRO's also state that no withdrawal or distribution from the accounts could be made until the separation of the assets was complete.

In December of 2000, plaintiff sought to have her half of the accounts in the Plans distributed to her. She claims that she submitted the proper forms for distribution, but did not receive any distribution. Meanwhile, her and Walter's divorce attorneys continued to negotiate the overall equitable distribution agreement, with the Plans' accounts sometimes being discussed. Plaintiff contends that Walter unjustifiably refused to make a determination on her distribution request or to segregate her interest in the Plans into a separate account as set out in the QDRO's. Eventually, the North Carolina Court of Appeals issued an

²Defendants refer to the orders as domestic relations orders or DRO's, apparently because Walter did not recognize them as "qualified" until the divorce was finally over. Because the Court must assume for purposes of the motion to dismiss that the facts pled in plaintiff's claim are true, the Court will refer to them as QDRO's at this time.

opinion in the case and the case was returned to the trial court where a Consent Judgment was entered on November 7, 2002.

Following the entry of the Consent Judgment, Walter determined that the QDRO's did apply effective November 20, 2002. Plaintiff submitted disclosure and election forms seeking distribution of her interest in the Plans on July 15, 2003. On September 11, 2003, plaintiff did receive a distribution from the Plans in the amount of \$390,303.80, an amount that is significantly less than plaintiff's interest at the time of her original request in December of 2000. On October 15, 2003, plaintiff submitted a written claim for an additional distribution. This was subsequently denied and plaintiff filed this lawsuit on January 21, 2004.

II. Claims

In her amended complaint, plaintiff raises nine claims for relief under the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001, et seq. (ERISA). Her first claim for relief alleges that the Plans and Walter failed to pay her benefits to which she was entitled. She contends that this is an abuse of discretion which has unjustly enriched Walter. Plaintiff seeks payment of the unpaid benefits. Plaintiff's other eight claims are not based on a failure to pay benefits, but instead set out several alleged breaches of fiduciary duty by various defendants through such actions as incorrectly applying state and federal law (the Plans and Walter), exercising fiduciary authority to advance personal interests in a domestic legal proceeding (Walter), failing

to remove Walter as the plan administrator even though he had a conflict of interest (Walter P.A.), failing to establish written procedures for deciding the qualified status of domestic relations orders (Walter and Walter P.A.), failing to notify plaintiff in 2000 of the procedures for determining the status of the QDRO's (the Plans and Walter), failing to notify plaintiff promptly and in writing that the orders entered in 2000 were not to be considered QDRO's (the Plans and Walter), failing to segregate plaintiff and Walter's accounts in the Plans as ordered in the QDRO's (the Plans and Walter), and prejudicing plaintiff's ability to enforce her ERISA rights through the issuance of a determination letter and appeal decision letter which are adverse to plaintiff (the Plans and Walter). Defendant has made a motion to dismiss the complaint pursuant to Fed. R. Civ. P. 12(b)(6).

III. Legal Standards

A motion to dismiss cannot succeed "'unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.'" Republican Party of North Carolina v. Martin, 980 F.2d 943, 952 (4th Cir.), cert. denied, 510 U.S. 828, 114 S.Ct. 93, 126 L.Ed.2d 60 (1993), quoting Conley v. Gibson, 355 U.S. 41, 78 S.Ct.99, 2 L.Ed.2d 80 (1957). Further, the Court must assume that the allegations in the complaint are true and construe them in the light most favorable to plaintiff. Id.

IV. Discussion

A. Failure to Allege Abuse of Discretion

Defendants' first argument in favor of dismissal is that plaintiff's claim for additional benefits should be denied because there is no basis for concluding that Walter abused his discretion when he denied her claim for further benefits. As they correctly point out, if an ERISA plan gives "the administrator or fiduciary discretionary authority to determine eligibility for benefits or to construe the plan's terms" then his decision may be reversed only if it is found to be an abuse of discretion. Firestone Tire and Rubber Co. v. Bruch, 489 U.S. 101, 115, 109 S.Ct. 948, 956-957, 103 L.Ed.2d 80 (1989). Defendants then cite language in the Plans that they claim gives Walter the discretion to determine the status of domestic relations orders and make other decisions necessary to administer the Plans. They then conclude that if plaintiff did make a December 2000 request to transfer her interest in the Plans, Walter's decision not to grant the request cannot be disturbed unless it is an abuse of his discretion. Finally, defendants conclude that the complaint "fatally fails to allege that Dr. Walter abused his discretion in declining to make the transfers as requested." (Def. Brf. at 8)

The Court initially notes that the language of the Plans relied on by defendants is neither part of the complaint nor attached to it as an exhibit. Also, although plaintiff may not have used the magic words "abuse of discretion," a fair reading of her original complaint would be that such an abuse was alleged.

However, assuming only for the purposes of deciding this motion to dismiss that Walter did have the discretion he claims and that plaintiff's original complaint was not sufficient to allege that he abused that discretion, plaintiff has now filed an amended complaint which specifically alleges that Walter abused his discretion by wrongfully denying her benefits to which she was entitled. (See, e.g., Amended Compl., ¶¶ 61, 63, 65, 67) For this reason, if for no other, defendants' argument that plaintiff has not alleged an abuse of discretion fails.

In conjunction with their first argument in favor of dismissal, defendants also claim that the complaint ignores the fiduciary responsibility that Walter had to the Plans and their participants. They argue that Walter could not comply with the QRDO's when they were originally entered because he and plaintiff's equitable distribution dispute was still on appeal and, therefore, subject to change.

Again, defendants' argument fails. Both plaintiff's original and amended complaints allege in many places that Walter's actions breached the fiduciary duties he owed to her. While defendants say that this ignores his fiduciary duty to the "Plans," they fail to show how his duties to other participants in the Plan were implicated, nor how the appeal could have affected anyone's interest in the Plans beyond plaintiff's and Walter's. Defendants' motion on this point should be denied.

B. Standing

Defendants' next argument is that plaintiff's second through ninth claims for relief should be dismissed because they are based on alleged breaches of fiduciary duty and improper conduct. Citing Massachusetts Mutual Life Ins. Co. v. Russell, 473 U.S. 134, 144, 105 S.Ct. 3085, 3091, 87 L.Ed.2d 96 (1985), defendants contend that such claims can only be raised on behalf of the Plans and not to seek the individual recovery claimed by plaintiff.

Although defendants' citation of Russell is correct to a point, the Supreme Court also later recognized that individual plaintiffs could seek equitable forms of relief such as an injunction to pay benefits, an order for an accounting, or the imposition of a constructive trust. Varity Corp. v. Howe, 516 U.S. 489, 116 S.Ct. 1065, 134 L.Ed.2d 130 (1996). Plaintiff has requested such relief in the present case.³ Plaintiff has also used her amended complaint to add allegations of abuse of discretion to her second through ninth claims for relief. For both

³Although plaintiff has requested equitable relief by claiming that Walter was unjustly enriched by his failure to timely separate and distribute her interest in the Plans, it is difficult to see how this would have occurred absent actual accounting errors. Plaintiff claims that, because the separation did not occur, Walter benefitted from money earned on funds in his accounts that should have been separated into her account or because he avoided losses which were attributed to plaintiff at the time her account balances were calculated. (Amended Comp., ¶ 46) However, because plaintiff and Walter each had a fifty percent share in the other's accounts in the Plans, it seems that any earnings or losses to one of them would have been equally shared by the other, making equitable relief inappropriate. Unless actual accounting errors can be proved, plaintiff should bear this in mind in pursuing claims at summary judgment or trial.

of these reasons, defendants' motion to dismiss based on plaintiff's alleged lack of standing should be denied.

C. Statute of Limitations

Defendants' third argument for dismissal is that plaintiff's claims are barred under the applicable statutes of limitations. Defendants state that plaintiff's claims for breach of fiduciary duty needed to be raised within the earlier of (1) six years after (A) the last action constituting a breach or (B) in the case of an omission, the latest date the fiduciary could have cured the breach, or (2) three years after the date plaintiff gained actual knowledge of the breach. 29 U.S.C. § 1113(1),(2). On the other hand, defendants state that her claim for recovery of plan benefits is governed by North Carolina's statute of limitations for breach of contract. This would mean that those claims must have been raised within three years of the time that plaintiff's request for benefits was formally denied or, if plaintiff made no formal claim for benefits, within three years of the time plaintiff should have become aware she was entitled to the benefits. Rodriguez v. MEBA Pension Trust, 872 F.2d 69, 72 (4th Cir. 1989); Cotter v. Eastern Conference of Teamsters Retirement Plan, 898 F.2d 424, 428-29 (4th Cir. 1990).

Plaintiff does not deny that defendants have correctly stated the applicable statutes of limitations. However, she correctly asserts that her claims should not be dismissed. Turning to the amended complaint, it alleges that plaintiff filed a formal request for benefits on December 22, 2002. (Amended Compl., ¶ 37) It

further alleges that defendants Walter and the Plans acted improperly by failing to respond in a timely manner to this request. (Id., ¶¶ 44, 45, 73) The amended complaint does not state that any formal denial was made by defendants until October 23, 2003, or about three months before this action was filed on January 21, 2004. Certainly, none of these allegations reveal that the statutes of limitations would have run as to plaintiff's claims.

Defendants state that as of November of 2000, "[p]laintiff was made aware, by and through numerous letters between her counsel and counsel for Dr. Walter, that the matter of the division of assets in the Plans was very much unresolved and that Dr. Walter was unwilling to make any distribution from the Plans" (Def. Brf. at 11) Defendants point to Exhibit H of the original complaint for support for this statement. Exhibit H, in turn, is an October 2003 letter from Dr. Walter to plaintiff which formally denies plaintiff's request for benefits. At one point, the letter states that plaintiff's attorney "effectively acknowledged" in a November 2000 letter that she was not entitled to a distribution at that time. It also says that Dr. Walter's attorney had informed plaintiff's attorney in a January 22, 2001 letter that the QDRO's were not effective until the appeal of the equitable distribution ruling was complete.

There are several problems with defendants' argument. First, it relies on documents not in the record. Second, even if the Court were to assume the truth of the statements in Exhibit H of

the complaint, defendant still could not prevail. Whatever plaintiff's attorney may have said in November of 2000, the complaint alleges that she made her request for benefits in late December of that year. No dispute could have arisen and no claim accrued prior to the request for benefits being made.⁴ As for the January 22, 2001 letter, it is not at all clear that it would be sufficient to start the running of the statutes of limitations, but, in any event, it was written within three years of the time plaintiff filed her suit on January 21, 2004.

In the end, defendants have failed to point to any evidence or any allegations in the original or amended complaint to support their statutes of limitations defenses. For this reason, their motion should, on these grounds, be denied.

D. Dismissal of Walter P.A.

Defendants next argue that defendant Walter P.A. should be dismissed from the case because it is not a proper party. Defendants state that, because Walter P.A. appointed an administrator for the Plans and plaintiff has not claimed that it controlled or influenced the administrator's decisions, the Plans and the administrator are proper defendants, while Walter P.A., plaintiff's former employer, is not. Defendant's argument appears correct and plaintiff has not contested the point in her opposition

⁴At one point, defendants also point out that plaintiff would have known of Walter's alleged conflicts of interest for more than three years before filing suit. However, defendants ignore the fact that, while the alleged conflicts may have existed in 2000, plaintiff's claim could not have accrued then because she did not suffer any alleged harm until later.

brief. Therefore, defendants' motion should be granted on this point and Walter P.A. should be dismissed from the lawsuit.

E. Release of Claims

Defendants' fifth argument in favor of dismissal is that plaintiff released all of her claims against Walter as a part of their divorce settlement. In support of this contention, defendants have submitted a copy of an order dated November 7, 2002 which was entered by the trial court in Walter and plaintiff's divorce. The order does include a paragraph in which plaintiff releases Walter from any claims she may have against him.

Although it is true that plaintiff signed a release as to Walter, the Court does not find that the release covers the claims in the present action. All of plaintiff's claims against Walter in the case at bar are raised against him in his capacity as a fiduciary and administrator for the Plans. However, the release in the divorce case pertains to him as an individual litigant in a divorce case. Nothing in the release suggests that it was intended to release Walter from claims arising from his administration of the Plans. As the Fourth Circuit recognized, a release aimed at one's fiduciary capacity and a release aimed at one's individual capacity can be two entirely separate things. See Barron v. UNUM Life Ins. Co. of America, 260 F.3d 310, 315-316 (4th Cir. 2001). Such is the case here.⁵

⁵In places in their brief, defendants state that Walter took actions regarding the divorce proceedings to protect the Plans and their assets and participants. While not tied directly to the release argument, defendants do
(continued...)

On page four of their brief, defendants do cite to some cases involving releases of ERISA claims. However, none of these cases are factually on point. All involve waivers of ERISA benefits as part of settlements of employment related, as opposed to domestic, disputes. The cases do not aid defendants and their waiver argument should be denied.⁶

F. Availability of a Constructive Trust or Restitution

As a part of the relief requested in her amended complaint, plaintiff asks that the Court provide her with equitable relief in the form of a constructive trust or restitution. Defendants argue that such relief is not available where a plaintiff seeks money damages, as opposed to equitable relief. They assert that plaintiff does seek money damages and ask that the Court hold accordingly that a constructive trust and restitution are not appropriate forms of relief in this case.

⁵(...continued)

make reference to Walter acting in more than a personal capacity during the divorce by stating that plaintiff signed the release at the end of "years of litigation with her former husband and **employer**." (emphasis added) (Def. Brf. at 14) If this is an attempt to cast the divorce as one involving Walter in his fiduciary capacity, it fails. There is no evidence at this stage of the case that the divorce was anything other than a personal dispute between the parties. Not only this, but there is no reason that it would have been. The fact that Walter was plaintiff's former employer and the administrator of the Plans is mere happenstance as far as the divorce was concerned. Divorcing couples routinely litigate over money in pension plans when neither is an employer nor an administrator. Moreover, it does not appear Walter's fiduciary capacity was implicated in any way during the divorce because only his and plaintiff's accounts, not the assets of the Plans in general or the accounts of the other participants, were at issue.

⁶Even if the waiver were construed to include plaintiff's ERISA claims, at least one court has held that broad waivers of rights in divorce proceedings do not affect ERISA rights because they are preempted by ERISA. McMillan v. Parrott, 913 F.2d 310, 311 (6th Cir. 1990).

Plaintiff responds to this argument by stating plainly that she does not seek money damages. She has also amended her complaint so that it more clearly seeks equitable remedies. (Amended Comp., ¶ 46) As noted in footnote 2, supra, plaintiff's request for equitable relief may face significant hurdles in the later stages of this case. However, the Court cannot say at this time that plaintiff is not entitled to any equitable remedy.

G. Extracontractual Damages

Defendants' final argument seeks the dismissal of plaintiff's first claim for relief. According to defendants, that claim is raised under 29 U.S.C. § 1132(a)(1)(B), which only allows her to receive the benefits to which she is entitled. She cannot be awarded extracontractual damages due to any delay in processing her request for benefits. See generally Russell, supra. Defendants then conclude that plaintiff is seeking such damages because she is trying to recover for the decreased value of her interest in the Plans which was caused by a decline in the stock market in the time that passed between the entry of the QDRO's in 2000 and the eventual distribution to plaintiff in 2003.

Plaintiff does not contend that she would be entitled to extracontractual damages. Instead, she flatly states that she is not seeking any such damages and rejects defendants' characterization of her claim as one for diminution of value due to a drop in the stock market. She states instead that she is alleging that losses were wrongfully assigned to her account and that her account balance was incorrectly calculated. Plaintiff has

made sufficient allegations to survive a motion to dismiss and will now have to prove them. Defendants' motion to dismiss her first claim for relief should be denied.

IT IS THEREFORE RECOMMENDED that defendants' motion to dismiss (docket no. 6) be granted as to defendant Doctors Walter & Whitehouse Professional Association and denied in all other respects.


United States Magistrate Judge

July 29, 2004